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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,884	10/20/2000	Kenneth R. Owens	4910.00003	6113
5073	7590	11/10/2005	EXAMINER	
BAKER BOTTS L.L.P.			MATTIS, JASON E	
2001 ROSS AVENUE				
SUITE 600			ART UNIT	
DALLAS, TX 75201-2980			PAPER NUMBER	
			2665	

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 09/692,884</p>	<p><b>Applicant(s)</b> OWENS ET AL.</p>	
	<p><b>Examiner</b> Jason E. Mattis</p>	<p><b>Art Unit</b> 2665</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. This Advisory Action is in response to the After-Final Amendment filed 9/19/05.

### ***Response to Arguments***

2. Applicant's arguments filed 9/19/05 have been fully considered but they are not persuasive.

With respect to Applicant's argument that:

"The protocol and acknowledgment signaling messages, whether in the form of sequenced protocol message units or separately sequenced poll and stat messages of the McAllister, et al. patent are not used to establish working or protection paths or a reverse notification path in its network, but merely to determine whether a first node receives a signaling message from a second node to which it can return an acknowledgment signaling message indicating that it is still operational. Moreover, the protocol and acknowledgment signal messages are sent on direct node to node signaling paths separate from the data path in the network. The McAllister, et al. patent has no capability at any of its nodes to determine whether data on its data path was received intact and on time let alone an ability to provide such an indication in a message along a reverse notification path as provided in the claimed invention. Any problems

occurring in the data path of the McAllister, et al. patent would not be recognized as long as the protocol and acknowledgment messages are sent and received in a proper manner. Accordingly, the protocol and acknowledgment signaling messages have no relationship with the traffic flow of the McAllister, et al. patent.” (See pages 10-11 of Applicant’s Remarks section)

the Examiner respectfully disagrees. First, the protocol messages or data PDUs of McAllister et al. do establish the claimed reverse notification claimed. These messages are sent over a data link 36 in both directions of the data flow, which includes the reverse direction, effectively setting up and maintaining a reverse notification path for each respective switched virtual circuit (SVC) or permanent virtual circuit (PVC) corresponding to the data link 36 (See column 6 lines 41-65 and column 9 line 47 to column 10 line 8 of McAllister et al.). Next, the system and method McAllister et al. does have capability at its nodes to determine whether data on its data path was received intact and on time. Since the signaling link 38, on which the reverse messaging is sent, and the routing link 40, on which the data is sent, are both part of the same data link 36 (See column 6 lines 20-40 of McAllister et al.), and since the protocol messages are sent and received over this data link 36 at a predetermined expected interval, the used of the P-NNI signal messages for a given virtual circuit does create capability for determined whether the traffic flow on the data link 36 has been received intact and on time. Further, since the signaling link 38 and routing link 40 are both part of a virtual circuit using data link 36 the protocol messages sent over the signaling link

38 do correspond to and have a relationship with the traffic flow through the data link 36.

With respect to Applicant's argument that:

"Moreover, the Cao, et al. application would not be able to use the acknowledgement messages generated by the McAllister, et al. patent as the Cao, et al. application would still perform protection switching at the downstream router by selecting one of two paths carrying the same data. The structure that would result from using the protocol and acknowledgement signaling messages transmitted along a signaling path independent of the disclose in the McAllister, et al., patent within the MPLS data network of the Cao, et al. application that implements an egress router for selection of one of two data paths carrying the same data would still lack sending of a third message, indicating whether traffic flow was received intact and on time, by a second switching in response to receiving traffic flow from a first switch so that the first switch can control protection switching as required by the claimed invention." (See pages 11-12 of Applicant's Remarks section)

the Examiner respectfully disagrees. The teaching of performing protection switching, as relied upon in the rejections above, comes from the McAllister et al. patent. As has been discussed in previous Office Actions, although the routers disclosed by Cao et al. do use the sink routers to determine when to perform a switchover and to determine the secondary path to use, there is no indication in the Cao et al. reference that using a sink

router to perform these functions is preferable to using a source router. Further, Cao et al. discloses that the failure information is propagated to both the source and the sink routers of the failed path. Therefore, performing a switchover using an upstream router, as disclosed by McAllister et al., does not eliminate any benefits or advantages gained by the teachings of Cao et al. Also, as discussed above, the McAllister et al. patent does disclose that reverse path messaging that indicates whether traffic flow sent on the working path was received intact and on time.

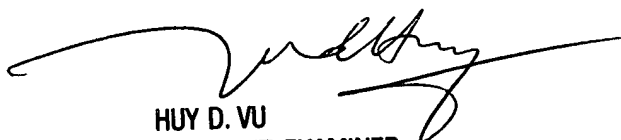
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason E. Mattis whose telephone number is (571) 272-3154. The examiner can normally be reached on M-F 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jem



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